**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| MARGARET MCKINLEY, | |
| Plaintiff and Respondent, | G041861 |
| v. | (Super. Ct. No. 07CC07109) |
| CHLN, INC., | O P I N I O N |
| Defendant and Appellant. | |

Appeal from a judgment of the Superior Court of Orange County, Jamoa A. Moberly, Judge.  Reversed pursuant to Code of Civil Procedure section 128, subdivision (a)(8), and remanded with instructions.

Long Williamson & Delis, John S. Williamson and Abraham H. Tang for Defendant and Appellant.

DiMarco, Araujo & Montevideo and B. James Pantone for Plaintiff and Respondent.

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THE COURT:[*]

Plaintiff Margaret McKinley and her family were dining at the Chart House restaurant in Newport Beach when a waiter on an upper level dropped several plates, hitting her on the head. A jury awarded her $165,000 in damages. Defendant CHLN, Inc., appealed. In its opening brief, appellant argued the trial court wrongly gave the jury a res ipsa loquitur instruction and improperly failed to reduce the amount of medical expenses damages by $30,000 pursuant to a pretrial stipulation. The appeal is still in the briefing phase.

The parties have now settled the matter and have filed a joint application and stipulation for reversal of the judgment pursuant to Code of Civil Procedure section 128, subdivision (a)(8) and in compliance with this court's published internal operating practices and procedures. A reviewing court may reverse or vacate a judgment upon the stipulation of the parties if it finds "[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal," and "[t]he reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128(a)(8)(A) & (B).)

We reviewed the joint application for reversal of the judgment, the declaration of counsel in support of the application, appellant's opening brief, and the relatively short record in this matter. This is a simple personal injury action. Even though neither party can explain how the plates fell off the tray of an experienced waiter, nothing in the record suggests there is an on-going public danger or any third parties could be collaterally affected by a reversal of the judgment. The parties explain that reversal of the judgment is necessary to effect the terms of the stipulation, will place the

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[*] Before Bedsworth, Acting P. J., Aronson, J., and Ikola, J.

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parties in the same position as if the appeal were successfully prosecuted, and will avoid the needless expense of private and public resources in briefing and deciding the matter on the merits.  We thus find there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal the judgment, and the reasons for requesting reversal of the judgment outweigh the erosion of public trust that may result from its nullification and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.  In making these findings we do not comment on the merits of the appeal.

Pursuant to the stipulation of the parties, the judgment is reversed and the matter remanded to the superior court with directions to vacate and set aside the judgment and retain jurisdiction to consider the parties' settlement agreement.  In the interests of justice each side shall bear its own costs on appeal.  Finally, the parties have requested the joint application and stipulation be expedited and thus we direct the clerk of this court to issue the remittitur forthwith.